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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,592	01/14/2002	R. Michael Gross		3738

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11/03/2006

Dennis L. Thomte  
THOMTE, MAZOUR & NIEBERGALL, L.L.C.  
Suite 1111  
2120 South 72nd Street  
Omaha, NE 68124

EXAMINER

PELLEGRINO, BRIAN E

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/046,592

Applicant(s)

GROSS, R. MICHAEL

Examiner

Brian E Pellegrino

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 8-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Brief***

Applicant's Brief has been considered and the finality of that action is withdrawn and a new Final Office Action is hereby issued based on the amended claims of 12/19/05.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "suction mechanism" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the limitation that the “proximal end of said tube is shaped and sized to have a diameter greater than an intermediate portion of said tube” was not found in the written disclosure.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,3 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al. (4915694). Fig. 2 shows a tool having an elongate tube **16** with an exterior surface having an elongate sleeve **13** coupled to the tube. It can also be seen the sleeve has a sealing face **11** on a distal end and transverse to the sleeve with a gasket **14** coupled to the distal end of the sleeve and establishes a seal against the tube. Additionally, (Fig. 2) illustrates the gasket is positioned across a substantial portion of the sealing face of the sleeve. Please note the intended use, as set forth in the claims, carries no weight in the absence of any distinguishing structure. Clearly, the device is capable of drawing material into a body cavity by forming a negative pressure and suction.

Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Raiche (2687131). Fig. 2 shows a slidable "sleeve" **21** (col. 2, lines 6-8) with proximal and distal end portions that is positioned over the exterior surface of an elongate tube **11**. The balloon unit **19** distal end portion is fully capable of forming a sealing surface for selective engagement with a body cavity. It is inherent that a suction mechanism is provided at the proximal end of the tubing since this device is designed to remove material from the body. Please note the intended use, as set forth in the claims, carries no weight in the absence of any distinguishing structure.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,2,4,8-11,13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Angsupanich (5197949) in view of Yamamoto et al. '694. Angsupanich discloses (Fig. 3) an elongate tube **1**. Angsupanich also discloses the tube is to be attached to a suction source, col. 2, line 25, col. 3, lines 14-16. Angsupanich discloses the distal end of the tube has a plurality of openings **12** for removing debris. It can also be seen that the suction tube has an angular bend at its distal end and the proximal end has a greater diameter than the intermediate portion. However, Angsupanich fails to disclose a gasket and sleeve coupled to the distal end of the tube. Yamamoto et al. '694 is explained supra. Yamamoto et al. also teach that the gasket is to impregnated with an antimicrobial agent, col. 2, lines 21,22. Yamamoto additionally teaches the antimicrobial gasket sleeve is designed to protect the surgical site from

infection, col. 1, lines 28-30. It would have been obvious to one of ordinary skill in the art to use an antimicrobial gasket sleeve at the distal end of a tube as taught by Yamamoto et al. with the suction tube of Angsupanich such that the receives protection from bacterial infection while the surgical procedure is performed.

Claims 5,12,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Angsupanich '949 in view of Yamamoto et al. '694 as applied to claims 1,11 and 15 respectively above, and further in view of Lee et al. (5693030). Angsupanich in view of Yamamoto et al. is explained supra. However, Angsupanich as modified by Yamamoto et al. fail to disclose the tube uses an obturator. Lee teaches (Fig. 3) an obturator 60 that may be extended in the tube that is fully capable of clearing debris. It would have been obvious to one of ordinary skill in the art to permit the tube to be used with an obturator as taught by Lee et al. with the tool of Angsupanich as modified by Yamamoto et al. such that the obturator provides the ability of the surgeon to free up any debris accumulation that would block the flow of material being removed.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1,8 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

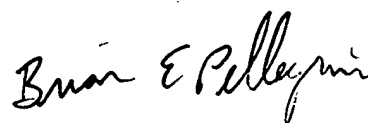
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on Monday-Thursday from 7:30am to 5pm. The examiner can also be reached on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738



**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**